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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/873,357
Filing Date: June 05, 2001
Appellant(s): PINAULT ET AL.

Theodore C. Shih
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/05/08 appealing from the Office action mailed 10/02/07.

(1) Real Party in Interest

A statement identifying by name the real party in interest as ALCATEL is contained in the brief.

(2) Related Appeals and Interferences

The brief indicated no related appeals and interferences, which directly affect or be directly affected by or have a bearing on the decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

❖ Toga (USPN 6041355), *hereinafter Toga*,

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- ❖ Fritch (USPN 6105132), *hereinafter Fritch*,
- ❖ Cotten (USPN 6330590), *hereinafter Cotten*,
- ❖ Hitson (USPUB 20020010759), *hereinafter Hitson*,
- ❖ Microsoft Press Computer Dictionary, 2nd Edition, ISBN: 1-55615-597-2, 1994,
- ❖ Marriam-Webster's Collegiate Dictionary, 10th Edition, 1993, ISBN: 0-87779-708-0.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. Claims 1-2, 4 and 8-12 remain rejected and claim 13 is rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, rejected under 35 U.S.C. 103(a) as being unpatentable over Toga (USPN 6041355).

Toga discloses enabling user terminals connected to a private network accessing a computer network to exchange information via a private access node (Toga, Fig. 1).

2. As per claims 1-2, 4, 8 and 10, in col. 2 lines 44-col. 3 line 26, Toga recites as follows: "FIG. 1 is a block diagram of a firewall separating a first network from a second network of computers. The first network, network A, is the internet 10 which includes the World Wide Web and its many web sites, such as web site 12. Network A is coupled to Network B, which may be a corporate network of computers, for example... The filtering router 20 is connected to the Internet 10. The filtering router

20 accepts only requests from the web proxy 22 for retrieving data from the Internet 10... Similarly, the filtering router 24 is connected to the client computers 30. The filtering router 24 accepts requests from the client computers 30 only directed to the web proxy 22. The filtering router 24 also only allows data from the web proxy 22 to be provided to the client computers 30... In the present invention, the web proxy monitors the content description language that was returned from the Internet. The web proxy looks at tags that indicate information about the content of the data, as will be described further with reference to FIG. 2. The web proxy then determines completion decisions as to whether to allow the transfer of data based upon the tag information. For example, the web proxy may allow complete transfer or partial transfer of the data. It may defer the transfer until a later time, or it may cache the transfer to allow its clients to access the data from this transfer without the need to retrieve the data a second time from the Internet. Various other completion decisions based upon resource constraints, content based upon age, and pricetag of the content are possible, as will be described”.

This reads on: temporarily storing a data stream received from a computer network and addressed to a user terminal of the user terminals connected to the private network in response to an access request from the user terminal in order to perform filtering based on data content of the data stream and discloses the presence of filtering based on data content of the data stream, wherein the filtering authorizing or blocking transmission of the multimedia data stream to the terminal is a function of particular criteria applied to the data stream received at the private access node.

The pricetag (tag) disclosed by Toga (in col. 4 lines 14-17, for example) reads on a signature. Thus, decisions making based upon pricetag within the data stream, reads on analyzing a signature included in the data stream for the purpose of the filtering.

3. Furthermore, not only Toga does not limit the data stream to data other than multimedia, but also Toga explicitly suggests that the received data could be multimedia data (Toga, e.g. col. 1 lines 14-31, col. 3 lines 33-40 etc.). Thus, it would have been at least obvious, if not inherent, to one of ordinary skill in the art at the time of applicant's invention to extend the Toga's invention to multimedia data stream. One of ordinary skill in the art would have been motivated to perform such a modification in order to extend filtering to various kinds of data, including multimedia data.
4. (The examiner also points out that even if Toga did not disclose multimedia data, requesting and receiving a multimedia data stream is old and well-known in the art of computing (e.g. Internet Browsing, USPN 6223292 etc.))
5. The filtering device in Toga's invention is part of the private network (e.g. col. 2 lines 49-55), which reads on providing particular criteria from the private network.
6. As per claim 9, Toga disclosure in col. 4 lines 8-11 and 17-21, clearly indicates performing an identifier search analysis on the data addressed to a user terminal to authorize transmission of the data to the terminal if an identifier is found in the multimedia data stream addressed to the terminal.

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7. As per new claim 11, any stream of data have information (e.g. a port identifying the information, type of the data (e.g. a protocol, UDP for instance), information about how to interpret the incoming data stream packets (e.g. first 32 bits identify IP address, the packet length, content location within data packets, etc.). As a result, filtering disclosed by Toga, inherently comprises “analyzing an information of said multimedia data” in the broadest, reasonable interpretation.
8. Furthermore, as per new claim 12, firewalls inherently store only a part (at least temporarily) of the multimedia data stream since the data stream is received (and process) as a sequence of data rather than one big chunk of data received precisely at the same moment.
9. As per claim 13, elements of the multimedia data stream that represent resource constraints taken in consideration for filtering decisions, e.g. elements indicating content age and/or pricetag of the multimedia stream age, read on a signature, indicating an existence of restriction on a user of the multimedia data stream. Similarly, a content label, which is a part of the multimedia stream, disclosed in Fig. 2 (e.g. “Violent content”) reads on a signature, indicating an existence of restriction on a user of the multimedia data stream.
10. Claims 5-7 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Toga (USPN 6041355) in view of Fritch (USPN 6105132) in view of Cotten (USPN 6330590).

Toga in view of Fritch teach filtering an access control that decides to allow or disallow data transmission as discussed above.

11. Toga in view of Fritch do explicitly teach retaining non-conformance data to enable interruption of a subsequently received data stream.

Cotten teaches counting, for control purposes, the number of times that data of a particular content is received and retaining non-conformance data to enable interruption of a subsequently received data stream (col. 3 line 46-col. 4 line 52).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to retain non-conformance data to enable interruption of a subsequently received data stream as taught by Cotten. One of ordinary skill in the art would have been motivated to perform such a modification in order to filter not only non-permitted but also unwanted data.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Toga (USPN 6041355) in further view of Hitson (USPUB 20020010759).

Toga discloses performing filtering based on data content of multimedia data stream and a signature, indicating an existence of restriction on a user of the multimedia data stream as discussed above.

However, even if Toga's invention did not include a signature, indicating an existence of restriction on a user of the multimedia data stream Hitson discloses a signature, indicating an existence of restriction on a user of the multimedia data stream (Hitson [0010] and claim 17). The signature in Hitson's disclosure is used in restricting access to the data. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include a signature indicating an existence of restriction on a user of the multimedia data stream access using (and

restrict access to the data based on the signature). One of ordinary skill in the art would have been motivated to perform such a modification in order to ensure access to the content only to authorized group.

(10) Response to Argument

On pages 10-12, Appellant contests independent claim 1 that was rejected over Toga.

Appellant argues that Toga does not teach “analyzing a signature included in said multimedia data stream for the purpose of said filtering”.

It appears that the main argument of Appellant’s is directed towards interpretation and purpose of a “signature” recited in the claim language.

Appellant writes:

“Specifically, the ‘tag information’ in Toga refers to displaying the data (by indicating tags within content description language), financial tags, resource constraints tags, and content restriction tags. While, in the present invention, signatures are used for the purposes of allowing or restricting multimedia data stream regardless of the ‘tag information’ definitions of Toga.”

Then, Appellant points to pg. 10 of the specification that, in Appellant’s words, “clearly states an exemplary embodiment of the signature”.

The examiner points out that the term signature has various meanings. For example, in the art of computer security (i.e. utilizing cryptography) the signature refers to an encrypted hash of particular data while in the art of electronic messaging (e.g. e-mail) a signature could simply be a set of characters.

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The specification does not provide a clear definition of the signature but merely discusses the use of the signature. See the specification, pg. 10 lines 10-11, for example:

“A signature can indicate the existence of restrictions on the use of the data that it accompanies, for example.”

Webster's Dictionary defines the term “signature” as being “something ... that serves to identify” and Microsoft Press Computer Dictionary defines it as “a sequence of data used for identification”, for example.

The above dictionary definitions, as well as signature capabilities suggested by appellant's specification is met by Toga's disclosed signatures (tags). The examiner points to col. 4 lines 14-16 and 23-31, wherein Toga teaches as follows:

“Other predetermined tag information that can be used by the web proxy to make completion decisions include content restrictions based upon sexual or violent content. The web proxy includes information about the users on its client systems which allows the web proxy to determine whether certain users should be allowed to access the subsequent data transfers of content description language...

At block 62, content description language received from the first network of computers is parsed by the second network of computers to determine tag information within the content description language. Operation continues at block 64 at which a completion decision is made by the second network of computers as to whether to allow the transfer of data **based on the tag information**.

The flowchart terminates at block 66.”

Additionally see, col. 3 lines 40-55, for example:

“Many tags are standardized so that all browsers will know **how to interpret the tags**... The present invention uses tags which can be used by the web proxy to determine whether to allow subsequent data transfers of content description language. The tags ‘cost’, ‘embedded load’, and ‘content’ are examples of new tags added to implement the present invention... The web proxy is able to compare the cost of the content against a spending limit of the user that requested the data. If the cost of the content is higher than the spending limit, then the transfer will be denied. The spending limit in this case may be per access, or it may be a cumulative limit that is being exceeded.”

The above is a clear indication that the Toga’s signature (tags) not only can, but also do indicate the existence of restrictions on the use of the data that it accompanies. Thus, even though not required by the claim language or the specification, the optional capability of a signature (argued by the Appellant) is taught in Toga’s disclosure. Thus, Toga’s tags read on signature recited in the claim language.

As per Appellant’s argument that “in the present invention, signatures are used for the purposes of allowing or restricting multimedia data stream regardless of the tag information”, the examiner points out that recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). Furthermore, the examiner points out that the argued limitation: “regardless of the tag information” is not present in the claim language.

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Moreover, the examiner points out that in addition to teaching a signature included in the data stream for the purpose of the filtering, Toga teaches that the purpose of analyzing the signature and filtering the data stream is filtering (“...allow the transfer of data based on the tag information...”, Toga, col. 4 lines 29-30, for example).

Thus, Toga clearly discloses *analyzing a signature included in said data stream for the purpose of said filtering*”.

Lastly, Toga does not limit the data stream to data other than multimedia, but also Toga explicitly suggests that the received data could be multimedia data (Toga, e.g. col. 1 lines 14-31, col. 3 lines 33-40 etc.). Thus, it would have been at least obvious, if not inherent, to one of ordinary skill in the art at the time of Appellant’s invention to extend the Toga’s invention to multimedia data stream. One of ordinary skill in the art would have been motivated to perform such a modification in order to extend filtering to various kinds of data, including multimedia data.

(The examiner also points out that even if Toga did not disclose multimedia data, requesting and receiving a multimedia data stream is old and well-known in the art of computing (e.g. Internet Browsing, USPN 6223292 etc.))

Thus, if not inherently, Toga’s disclosure at least teaches the claimed *“analyzing a signature included in said multimedia data stream for the purpose of said filtering”*.

On pages 12-14, Appellant contests independent claim 10 that was rejected over Toga.

*Appellant argues that Toga does not teach “analyzing a **signature** included in said multimedia data stream for the purpose of said filtering”.*

However, Appellant essentially repeats the previously addressed allegation that have been addressed above.

On pages 14-15, Appellant contests dependent claims 5-7 that were rejected over Toga in view of Fritch in view of Cotten.

However, Appellant's arguments regarding claims 5-7 are not clear. Appellant first discusses Cotten's method and system for detecting bulk email as pertaining to retaining non-conformance data and then argues that Cotten does not teach “analyzing a signature included in the multimedia data stream”.

The examiner points out that these argued limitations were met by Toga. Refer to the discussion towards claim 1, above.

Furthermore, Appellant argues as follow:

“Moreover, Cotten only teaches to store in a register the signature which was calculated in the detecting step as discussed above. Id, see also, col. 3, lines 51-55, and col. 4, line 19-24. This teaching is not analogous to that ‘said multimedia data stream stores in the determination of conformance’, as recited in claim 5 or ‘data for which non-conformance has been detected in said multimedia data stream is retained to enable interruption of subsequently received multimedia

data stream', as recited in claim 6. Therefore, for at least these reasons, Applicant submits that the claims are not obvious in view of the combination."

The examiner is not sure whether Appellant argues that some of the claim language in claim 5 and 6 is not taught by the prior art, whether Appellant argues that Cotten's and Toga's teachings are not analogous art or whether there is another point that the examiner failed to notice.

Additionally, Appellant's offers no support for the allegations and, as a result, it is not clear what facts from Cotten's disclosure would be sufficient to satisfy Appellant's arguments. Thus, the arguments towards claims 5 and 6, presented by Appellant are addressed as best understood.

As per "said multimedia data stream stores in the determination of conformance", the examiner points out that devices processing data stream (such as firewalls that determine whether the data is to be forwarded or blocked) inherently must store the data stream, even if it is just temporary. At the very least the data stream must be read to (and hold in) memory, and excess of the data stream must be kept in some other storage location (e.g. a buffer) until the apparatus can process the next part of the data stream.

Additionally, Cotten explicitly discloses storing data in the determination of conformance (see Cotten, col. 3 lines 51-55 or col. 4 lines 30-38, for example).

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As per “*data for which non-conformance has been detected in said multimedia data stream is retained to enable interruption of subsequently received multimedia data stream*”, Cotten explicitly disclosed that the data (including non-conformance data) is retained to enable interruption of subsequently received data stream (see Cotten, col. 3 lines 51-55 or col. 4 lines 30-38, for example). Similarly, in col. 4 lines 50-52, for example, Cotten discloses using the retained non-conformance data to enable interruption of subsequently received multimedia data stream (the detected non-conformance data, i.e. signature is retained by the SPAM Detection system to ensure SPAMless email stream).

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to include Cotten's retaining the multimedia data stream to enable interruption of subsequently received data stream into Toga's invention, given the benefit of an effective way of eliminating unwanted data in a manner that puts little burden upon either the sender or recipient to improve the system (Cotten, col. lines 53-56).

Both, Toga and Cotten's system are data processing systems that aim to filter incoming data by analyzing (see Toga, col. 2 lines 12-14 and Cotten, col. 1 lines 5-27). Both inventions are computer based filtering data units that are capable to process Internet data stream (see Toga, col. 2 lines 56 and Cotten, col. 2 line 18-20, for example). Thus, the advantages of the systems of Toga and Cotten could have been easily combinable with more than reasonable expectations of success.

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On pages 15, Appellant contests the dependent claim 13 as rejected over Toga.

Appellant argues that “claim 13 is patentable at least by virtue of their dependency from claim 1, as Hitson fails to cure the deficient disclosure of Toga.”

Appellant does not offer any additional comments and the examiner points out that, as clearly shown above, the limitations of claim 1 are sufficiently addressed by Toga’s disclosure.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Peter Poltorak/

Examiner, Art Unit 2134

Conferees:

/Kambiz Zand/

Supervisory Patent Examiner, Art Unit 2134

Art Unit: 2134

/KimYen Vu/

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Attachment: copies of Microsoft Press Computer Dictionary, 2nd Edition, ISBN: 1-55615-597-2, 1994, and Marriam-Webster's Collegiate Dictionary, 10th Edition, 1993, ISBN: 0-87779-708-0.